

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**IN RE:**

**PENINSULA CLEAR LAKE TEXAS, L.P.**

**CASE NO. 09-33906  
(Chapter 11)**

## **Debtor**

## **AMEGY MORTGAGE COMPANY, LLC**

Movant

VS.

**PENINSULA CLEAR LAKE TEXAS, L.P.,**

## **Respondent**

**MOTION OF AMEGY MORTGAGE COMPANY, L.L.C.**  
**FOR RELIEF FROM THE STAY**

THIS IS A MOTION FOR RELIEF FROM THE AUTOMATIC STAY. IF IT IS GRANTED, THE MOVANT MAY ACT OUTSIDE OF THE BANKRUPTCY PROCESS. IF YOU DO NOT WANT THE STAY LIFTED, IMMEDIATELY CONTACT THE MOVING PARTY TO SETTLE. IF YOU CANNOT SETTLE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY AT LEAST TWO DAYS BEFORE THE HEARING. IF YOU FILE YOUR RESPONSE LESS THAN 5 DAYS BEFORE THE HEARING, YOU MUST SEND A COPY TO THE MOVANT BY FACSIMILE, BY HAND, OR BY ELECTRONIC DELIVERY. IF YOU CANNOT SETTLE, YOU MUST ATTEND THE HEARING. EVIDENCE MAY BE OFFERED AT THE HEARING AND THE COURT MAY RULE.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

THERE WILL BE A HEARING ON THIS MATTER ON July 22, 2009, AT 9:00 AM IN COURTROOM #403, 4th Floor, United States Bankruptcy Court, 515 Rusk Avenue, Houston, Texas.

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now Amegy Mortgage Company, L.L.C. ("AMC"), seeking modification of the automatic stay in this case pursuant to § 362(d) of the United States Bankruptcy Code. AMC seeks authority to exercise any and all rights AMC may have in the collateral described below. For cause, AMC offers the following:

1. On June 1, 2009, Peninsula Clear Lake Texas, L.P. ("Debtor") filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code. This bankruptcy case is filed as a Single Asset Real Estate case and estate.

2. Jurisdiction of this cause is granted to the Bankruptcy Court pursuant to 28 U.S.C. § 157 and § 1334. This motion is filed pursuant to 11 U.S.C. § 362(d) and Bankruptcy Rule 4001.

#### **Background**

3. On or about February 15, 2006 Debtor and AMC entered into a Development Loan Agreement for the development of 39.97 acres tract of land located in the M. Muldon Two League Grant, League City, Galveston County, Texas. Debtor executed and delivered to AMC a Promissory Note, a copy of which is attached hereto as Exhibit "A". To secure the payment of the Promissory Note, Debtor executed and delivered to AMC a Deed of Trust, Security Agreement, Financing Statement and Assignments of Rents and Leases, which was recorded under clerk' s file number 2006010279 of the Real Property Records of Galveston County, Texas. (A copy of the Deed of Trust is attached hereto as Exhibit "B"). The documents and facts related to this Construction Loan shall hereafter be referred to as "Development Loan".

4. The Note and Deed of Trust related to the Development Loan were modified, renewed, rearranged and extended by that certain First Modification Agreement executed September 5, 2007 and recorded under clerk' s file number 2007063266 of the Real Property Records of Galveston County, Texas. (A copy of the First Modification Agreement is attached hereto as Exhibit "C"). The Note and Deed of Trust were again modified, renewed, rearranged and extended by that certain Second Modification Agreement effective February 1, 2009 and recorded in the Property Records of Galveston County, Texas. (A copy of the Second Modification Agreement is attached hereto as Exhibit "D"). The Scheduled Maturity Date set forth in the Second Modification Agreement is June 1, 2009.

5. As of June 1, 2009, Debtor was indebted to AMC in connection with Development Loan in the amount of **\$5,215,153.00** (principal, interest and costs). Interest continues to accrue at the daily rate of

**\$2,485.98.** The most recent written appraisal on the real property securing this debt is in the amount of **\$3,900,000.00.**

**Relief**

6. The averments and facts set forth in Paragraphs 1-5 above are incorporated herein by reference for all purposes.

7. Cause exists for relief from the stay under 11 U.S.C. § 362(d)(1) in that (a) AMC is not adequately protected, (b) taxes on the real estate collateral are not being maintained and interest and penalties will accrue at accelerated rates on a monthly basis, (c) the Debtor has filed a Single Asset case without provisions for repayment to AMC and (d) the real estate collateral continues to depreciate in value.

8. Relief from the stay is appropriate pursuant to 11 U.S.C. § 362(d)(2) in that the Bankruptcy Estate does not have sufficient equity in the Property and is without the resources to offer AMC adequate protection.

9. Said property is not necessary for an effective organization as the Debtor will not be able to file a confirmable plan under Chapter 11 of the Bankruptcy Code.

10. The Debtor has no assets, collateral or source of funds to offer adequate protection to Movant.

11. Movant certifies that prior to filing this motion, Movant's counsel conferred with the Debtor's attorney, Erin Jones and she is opposed to this motion. An agreement could not be reached.

WHEREFORE, PREMISES CONSIDERED, AMC prays that upon final hearing hereof, this Court enter an order (1) modifying the automatic stay under 11 U.S.C. § 362(d), to permit AMC to take any and all steps necessary to exercise any and all rights AMC may have pursuant to the Loan Documents, and (2) that AMC have such other and further relief as is just.

Respectfully submitted,

By:/s/ Bruce M. Badger

Bruce M. Badger

SBN 01498700

John R. "Robbie" Osborne, Jr.

SBN 24027708

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ATTORNEYS FOR AMEGY

MORTAGE COMPANY, L.L.C.

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VS.

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## **Respondents**

**PROOF OF SERVICE OF MOTION**  
**FOR RELIEF FROM STAY AND NOTICE OF HEARING**

I hereby certify that on the 22<sup>nd</sup> day of June, 2009, and in accordance with FRBP and BLR 4001, as amended, I served a correct copy of Movant's Motion for Relief from Stay with the Notice of Hearing on the motion either electronically or by first class mail on those parties listed on Exhibit "1". All parties entitled to notice have been served. I certify under penalty of perjury that this is true.

/s/ Bruce M. Badger  
Bruce M. Badger  
SBN 01498700  
John R. " Robbie" Osborne, Jr.  
SBN 24027708  
Badger Law Office  
3400 Avenue H, Second Floor  
Rosenberg, TX 77471  
(832) 595-8888; Metro (281) 633-9900  
Fax (281) 633-9916

**Exhibit "1"**

<b>Debtor:</b> Peninsula Clear Lake Texas, L.P. 13806 Lilac View Court Houston, Texas 77584	<b>Debtor's Attorney</b> Erin E. Jones Barron, Newburger, Sinsley, PLLC 5718 Westheimer, Ste 1755 Houston, TX 77002	<b>US Trustee:</b> Christine A. March Office of the US Trustee 515 Rusk Ave. Ste. 3516 Houston, Texas 77002
	<b>Parties Requesting Notice</b>	
<b>Allison H Gabbert,</b> Via email to <a href="mailto:agabbert@frvf-law.com">agabbert@frvf-law.com</a>	<b>Tara L. Gundemeier</b> Via email to <a href="mailto:houston_bankruptcy@publicans.com">houston_bankruptcy@publicans.com</a>	
	<b>20 Largest Unsecured Creditors</b>	
<b>Barry Electric</b> 13225 FM 529, Suite 201 Houston, Texas 77041	<b>Boyar &amp; Miller, PC</b> 42645 San Felipe, #1200 Houston, Texas 77027	<b>Brandon International Inc</b> 3334 Richmond Ave, # 205 Houston, Texas 77098
<b>Cullum Heard</b> 11322 Piping Rock Lane Houston, Texas 77077	<b>Coastal Testing Labs, Inc.</b> PO Box 87650 Houston, Texas 77287	<b>Element Gardens</b> PO Box 7675 Houston, Texas 77270
<b>Linco Construction Co.</b> 15490 Voss Road Sugar Land, Texas 77478	<b>Diamond McCarthy, LLP</b> 6504 Bridgepoint Parkway Suite # 400 Austin, Texas 78730	<b>SheMark Engineering</b> 8419 EF Lowry Expressway Suite 120 Texas City, Texas 77591
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